

10 June 1976

MEMORANDUM FOR: General Counsel

FROM : John F. Blake
Deputy Director for Administration

Tony:

1. You mentioned that there will be a meeting at the White House next week to discuss the interpretation of provisions of Executive Order 11905 as it pertains to our obligations to report information on possible or actual violations of law.

2. I believe you will find the attached memorandum from the Acting Director of Security to me helpful in constructing our reaction to the problem. While it may be that the security memorandum is a bit "over-written", it is substantively a good portrayal of the problem.

3. As I have previously mentioned to you, we would welcome the opportunity to have Bob Gambino or Sid [REDACTED] attend the meeting with you.

STATINTL

/s/ John F. Blake

John F. Blake

Att

Original - General Counsel w/Orig of Att (DDA 76-2878, Memo to DDA fr AD/OS, dtd 9 June 1976; Subject: Reporting Possible Violations of Crimes

- 1 - DDA Subject w/cy Att and Ref (DDA 76-2777, dtd 1 June)
- 1 - DDA Chrono w/o Att or Ref
- 1 - JFB Chrono w/o Att or Ref

DDA:JFBBlake:der (10 June 1976)

9 JUN 1976

MEMORANDUM FOR: Deputy Director for Administration

STATINTL FROM : [REDACTED]
Acting Director of Security

SUBJECT : Reporting Possible Violations
of Crimes

REFERENCE : Memorandum from Acting General
Counsel, dated 28 May 1976, same
subject (OGC 76-2847)

1. This memorandum is for information only.
2. This is in response to the Office of General Counsel (OGC) request that our concerns raised by the Department of Justice (DOJ) interpretation of the section of Executive Order 11905 dealing with reporting of possible violations of law be documented.
3. In contrast to the DOJ position, the Office of Security interpretation may be considered simplistic, if a common sense analysis of the spirit and intent of the provisions at issue is synonymous with simplemindedness. We interpreted the order as a specific effort to control illegal activities forbidden by the Charter of this Agency and to preclude illegal activities, particularly on the domestic scene, by other intelligence agencies. Further, our interpretation extended to the reporting of crimes which had not surfaced in the past because of reluctance to compromise classified intelligence information or information concerning sources and methods.
4. Under the expanded DOJ interpretation, the Office of Security, by virtue of our mission and activities, will encounter difficulties in following the DOJ guidelines, which, after consideration of nuances in the DOJ position, are insurmountable. To support

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this conclusion, a list of Office of Security functions which will be influenced is presented, along with appropriate exposition relating to complications.

5. Among Office of Security activities which might develop reportable information are: review of a Personnel History Statement or security file; field investigation; polygraph interviews and interviews of a minor in lieu of polygraph; personal interviews on all matters of security concern which require exploration or resolution; briefings, debriefings, and all other External Activities Branch interviews; authorized surveillance, Area Security Officer duties, and Overseas Security Group functions. Obviously, some of these activities afford more opportunity for exposure to reportable information than others. However, because it is impossible to know when, where, and what an employee will say, even during the most routine interview, all Security Officers would have to be prepared to respond in a situation where information is offered pertinent to a crime or a possible crime, committed or contemplated.

6. Under the very broad DOJ interpretation, the Security Officer would receive information that involves firsthand knowledge, secondhand or "third-party" information, biased opinions, and rumors. Some factors which will govern receipt of the action are:

a. Consideration of the Privacy Act would apply if the information is offered by an informant or "snitch." It would also be prudent to counsel him on libel and rights of the accused when and if charges are brought.

b. If a "confession" is involved, the person offering information must be advised of rights involving self-incrimination lest we enter into a situation involving violation of the individual's Fifth Amendment rights.

c. In order to provide effective guidance, the Security Officer must know what should be reported, what it is not necessary to report, and what neither we nor DOJ are certain qualifies as reportable information. Further, the Security Officer presumably would have to be familiar with the U. S. Criminal Code, the D. C. Code, and, in theory, all appropriate U. S. civil and administrative laws.

d. Because all employees are enjoined to report actual or possible crimes, the Security Officer must determine who failed to report firsthand, third-party, or rumored information. Such people would be culpable.

7. Given the above considerations and circumstances, every interview, however routine, would be prefaced by a torturous discussion of reportable information, reading of Miranda Rights, Privacy Act considerations, and consequences to the person offering information. The same would apply to unofficial contacts with employees. If reportable information, as defined by DOJ, is mentioned at a party or other social occasion, an employee should be interrupted and given the full treatment associated with an official interview.

8. An area of primary concern is the polygraph program. Overseas operational polygraph interviews include a counterintelligence responsibility. Must this exercise be approached with all of the legalistic caution which would apply to interviews of applicants or employees? If so, would effectiveness be dangerously diminished or destroyed? Other uses of the polygraph which would be in jeopardy include interviews of assignees, detailees, and contractors with staff-like access. These are now sensitive areas, in terms of justification and compliance. Individuals in the categories mentioned who are advised of legal jeopardy created by a reporting requirement are much less likely to agree to an interview.

9. A major point of concern that actually transcends the Office of Security's sphere of responsibility is what would be employee reaction to the DOJ interpretation. The Offices of Medical Services, Personnel, and Security have striven hard over the years to gain the confidence of our employees and to have them solicit guidance and help before any work-related situation reaches a crisis stage. It is almost an absolute certainty that the DOJ position would destroy the cornerstone of this Agency/employee relationship. If confidentiality can no longer be assumed, if we must automatically report every peccadillo that comes to our attention, these programs so long in the making and so beneficial to the Agency will "dry up and blow away like a raisin in the sun." The loss will be severe because many small solvable problems would go undetected until they developed into large and possibly unsolvable problems. The overall effect would be mutually detrimental to the Agency and to all its employees.

10. A corollary to the above situation exists with respect to our applicants and others being considered for access to Agency information and involvement in operations. In these cases, as part of our processing, we invite candidates to furnish "unfavorable" information about their background in a confidential manner. We do this, again, for the benefit of the Agency and the protection of our operations. Sometimes, information so furnished is important in determining the acceptability of the candidate. To insist that information so given for the purposes of making a personnel, security, or medical evaluation be automatically a flag for Department of Justice investigative or prosecutorial action will take away from us the sources of such information.

11. As a final point, we must go on record and state that the DOJ's conclusion that violation of non-federal laws, even a planned murder, "could not be reported to anyone" may be legal but it is also an absolute abrogation of common sense and civil morality. On this point above all, it would seem that the Executive Order demands re-examination as to what was meant to be said as opposed to what was actually said.

12. In summary, if nothing is done to clarify the Executive Order, and if the DOJ interpretation is given Agency-wide circulation as a mandate for employees, the entire Agency would operate in an atmosphere of confusion and suspicion. Within this Office, a major reappraisal of approach to our various activities would be required. Whatever, the results of such a reevaluation, the Office of Security would face self-defeating restrictions and unreasonable demands on our employees.



STATINTL

DD/A Registry
File *Legal*
DDA 76-2777

3 June 1976

MEMORANDUM FOR: General Counsel

FROM : John F. Blake
Deputy Director for Administration

SUBJECT : Reporting of Possible Violations of Crimes

REFERENCE : OGC Memorandum (76-2847), dated 28 May 1976;
Same Subject

Tony:

1. What with ships we cannot sail, hostile clandestine transmitters people want to make it difficult for us to locate, and survivor benefits to widows we might have to reduce, I choose not to add to your troubles at the moment. There is, however, one other area of current and significant confusion I would like to call to your attention and suggest to you a rationale for temporary relief.

STATINTL 2. I refer in sequential order to Executive Order 11905, Mr. Antonin Scalia's memorandum of 7 May 1976 to Mr. Mike Duval in the White House concerning E.O. 11905, and to Mr. [REDACTED] memorandum of 28 May 1976 to the local senior gentry on the subject "Reporting of Possible Violations of Crimes."

STATINTL 3. We are informed by [REDACTED] memorandum that
STATINTL Executive Order 11905 (and our counterpart Agency regulation, [REDACTED] must be interpreted in accordance with the views of Mr. Scalia. I suggest and request that until matters raised by Mr. Scalia with the White House are resolved between them and the suggestion raised by Mr. Scalia that the Executive Order be appropriately amended, that we proceed to implement the Executive Order with the understanding that existed prior to Mr. Scalia's memorandum of 7 May. What is not involved here, in my opinion, is adherence to federal law, the lack of which leads to a violation of law. What is involved here is adherence to

the provisions of Executive Order 11905, an administrative document of the President. If one of the President's senior legal advisors challenged the validity of certain provisions of an Executive Order, it would seem to me that challenge should be resolved before we have to accept the legal advisor's interpretation.

4. On this matter your Office has asked for inputs from the various Directorates by 9 June 1976, after which, hopefully, the Office of General Counsel will be in touch with Mr. Scalia. Inasmuch as it would appear we are not dealing with a problem of great time duration but one on which positive action is underway, I would request relief from adherence to some of the onerous interpretations of Executive Order 11905 raised by Mr. Scalia until the matter is resolved.

5. I would be more than happy to give examples in conversation with you of the extremely difficult position in which we find ourselves because of the Scalia/Duval memorandum.

/s/ John F. Blake

John F. Blake

Distribution:

Original - General Counsel

1 - D/OS

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1 - DDA Chrono

1 - JFB Chrono

DDA:JFBBlake:der (3 June 1976)